Free IT support terms and conditions: cover

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IT support terms and conditions

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time [for the provision of the Provider's services] shall be governed by these Terms and Conditions, and the Provider will ask the Customer for the Customer's express written acceptance of these Terms and Conditions before providing [any such services] to the Customer.

TERMS AND CONDITIONS

1. Definitions

1.1 In these Terms and Conditions[, except to the extent expressly provided otherwise]:

"**Charges**" means:

(a) [the charges and other payable amounts specified in Section 7 of the Statement of Work and elsewhere in these Terms and Conditions];

(b) [charges calculated by multiplying [the standard time-based charging rates of the Provider (as notified by the Provider to the Customer before the date of the Contract)] by the time spent by the personnel of the Provider performing [the Services] (rounded [down by the Provider to the nearest quarter hour])]; and

(c) [such other charges and payable amounts as may be agreed in writing by the parties from time to time];

*[additional list items]*

"**Contract**" means a particular contract made under these Terms and Conditions between the Provider and the Customer;

"**Customer**" means the person or entity identified as such in Section 1 of the Statement of Work;

"**Customer Personal Data**" [means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Contract][, but excluding *[personal data]* with respect to which the Provider is a data controller];

"**Data Protection Laws**" means [the EU GDPR and the UK GDPR][ and all other applicable laws relating to the processing of Personal Data];

"**Effective Date**" means [the date of execution of the Contract];

"**EU GDPR**" means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"**Personal Data**" [means personal data under any of the Data Protection Laws];

"**Products**" means [*[identify products]*] OR [any products that the Provider supplies or agrees in writing to supply to the Customer from time to time] OR [those products identified in Section 5 of the Statement of Work];

"**Provider**" means [*[individual name]* of *[address]*] OR [*[company name]*, a company incorporated in *[jurisdiction]* (registration number *[registration number]*) having its registered office at *[address]*] OR [*[identify party]*];

"**Services**" means [any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions];

"**Statement of Work**" means a written statement of work agreed by or on behalf of each of the parties;

"**Support Services**" means the support services specified in Section 2 of the Statement of Work;

"**Supported Hardware**" means [the hardware identified in Section 3 of the Statement of Work] OR [any hardware owned by or leased to the Customer and used in the course of the business of the Customer from time to time] OR [*[specify the supported hardware]*];

"**Supported Software**" means [the software identified in Section 3 of the Statement of Work] OR [any software owned by or licensed to the Customer and used in the course of the business of the Customer from time to time] OR [*[specify the supported software]*];

"**Term**" means [the term of the Contract, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2];

"**Terms and Conditions**" means all the documentation containing the provisions of the Contract, namely the main body of these Terms and Conditions, Schedule 1 (Data processing information) and the Statement of Work, including any amendments to that documentation from time to time;

"**Third Party Software**" means [that software the rights in which are owned by one or more third parties that the Provider agrees to supply to the Customer under the Statement of Work];

"**Third Party Software Licence**" means [the Third Party Software Vendor's standard licensing terms for the Third Party Software from time to time];

"**Third Party Software Vendor**" means [a third party that has granted to the Provider the right to distribute the Third Party Software and resell licences for the Third Party Software]; and

"**UK GDPR**" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time.

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3. Term

3.1 The Contract shall come into force upon the Effective Date.

3.2 The Contract shall continue in force [indefinitely] OR [until *[date]*, at the beginning of which the Contract shall terminate automatically] OR [until *[event]*, upon which the Contract shall terminate automatically], subject to termination in accordance with Clause 13 or any other provision of these Terms and Conditions.

4. Support Services

4.1 The Provider shall provide the Support Services to the Customer [during the Term].

4.2 The Provider shall provide the Support Services [with reasonable skill and care] OR [in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry] OR [*[specify standard(s)]*].

4.3 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Contract is overdue, and the Provider has given to the Customer at least [30 days'] written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

5. Product supply

5.1 The Provider shall supply the Products to the Customer, in accordance with the requirements of the Statement of Work, subject to all the provisions of these Terms and Conditions.

5.2 Unless the parties agree otherwise in writing:

(a) the Products must be delivered by the Provider or a person acting on behalf of the Provider to [the premises of the Customer][ within *[period]*];

(b) the Provider shall be responsible for arranging [loading, transport, unloading and transit insurance] in respect of the Products;

(c) the Provider shall be responsible for paying all costs relating to such [loading, transport, unloading and transit insurance]; and

(d) risk in the Products shall pass from the Provider to the Customer upon the delivery of the Products by the Provider.

OR

5.2 Unless the parties agree otherwise in writing:

(a) the Products must be collected by the Customer or a person acting on behalf of the Customer from [the premises of the Provider] within the period of [5 Business Days] following the receipt by the Customer of a written notice from the Provider stating that the Products are ready for collection;

(b) the Customer shall be responsible for arranging [loading, transport, unloading and transit insurance] in respect of the Products;

(c) the Customer shall be responsible for paying all costs relating to such [loading, transport, unloading and transit insurance]; and

(d) risk in the Products shall pass from the Provider to the Customer upon the collection of the Products by the Customer.

5.3 Legal and equitable title to the Products will pass from the Provider to the Customer upon the later of:

(a) [delivery] OR [collection] OR [delivery or collection] of the Products; and

(b) receipt by the Provider of all amounts due from the Customer under the Contract[ or any other contract between the parties].

6. Third Party Software supply

6.1 The Provider shall supply the Third Party Software to the Customer by the means and in accordance with the timetable specified in the Statement of Work[; providing that if there is no means specified, the Third Party Software shall be supplied by digital download, and if there is no timetable specified, the Third Party Software shall be supplied promptly following the date of the Statement of Work].

6.2 Unless the parties expressly agree otherwise, the Third Party Software shall be supplied in executable form only.

6.3 The Provider shall ensure that a copy of the Third Party Software Licence is supplied or otherwise made available to the Customer upon or before [the parties agree to the supply of the corresponding Third Party Software][, whether by means of the Third Party Software Vendor's website or otherwise].

6.4 The Customer shall be responsible for ensuring that the Customer's use of the Third Party Software is properly licensed.

6.5 The parties acknowledge that the Customer's rights to use the Third Party Software, and the restrictions on the Customer's use of the Third Party Software, shall be as set out in the Third Party Software Licence.

6.6 The Customer must abide by the terms of the Third Party Software Licence and ensure that all persons using the Third Party Software supplied by the Provider to the Customer abide by the terms of the Third Party Software Licence.

6.7 The Provider acknowledges that the Third Party Software Licence creates rights and obligations between the Customer and the Third Party Software Vendor, and that the Provider is not a party to the Third Party Software Licence.

7. Customer obligations

7.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:

(a) [co-operation, support and advice];

(b) [information and documentation]; and

(c) [governmental, legal and regulatory licences, consents and permits],

as are reasonably necessary to enable the Provider to perform its obligations under the Contract.

7.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under the Contract.

8. Charges

8.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.

8.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 8.2.

8.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated [inclusive of any applicable value added taxes] OR [exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider].

8.4 The Provider may elect to vary [any element of the Charges] by giving to the Customer not less than [30 days'] written notice of the variation[ expiring on [any anniversary of the date of execution of the Contract]][, providing that no such variation shall constitute a percentage increase in [the relevant element of the Charges] that exceeds[ [2]% over] the percentage increase, since the date of the most recent variation of [the relevant element of the Charges][ under this Clause 8.4] (or, if no such variation has occurred, since the date of execution of the Contract), in [the Retail Prices Index (all items) published by the UK Office for National Statistics].]

9. Payments

9.1 The Provider shall issue invoices for the Charges to the Customer [from time to time during the Term] OR [on or after the invoicing dates set out in Section 7 of the Statement of Work] OR [*[dates for invoicing]*].

9.2 The Customer must pay the Charges to the Provider within the period of [30 days] following [the issue of an invoice in accordance with this Clause 9] OR [the receipt of an invoice issued in accordance with this Clause 9].

9.3 The Customer must pay the Charges by [debit card, credit card, direct debit or bank transfer] (using such payment details as are notified by the Provider to the Customer from time to time).

9.4 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may:

(a) charge the Customer interest on the overdue amount at the rate of [8% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or

(b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

OR

9.4 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may charge the Customer interest on the overdue amount at the rate of [2% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).[ The Provider acknowledges and agrees that it shall have no right to claim interest or statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998, and that its contractual rights under this Clause 9.4 constitute a substantial remedy within the meaning of that Act.]

10. Data protection

10.1 [The Provider] OR [Each party] shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

10.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Contract.

10.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Contract:

(a) the Personal Data of data subjects falling within the categories specified in Paragraph 1 of Schedule 1 (Data processing information)[ (or such other categories as may be agreed by the parties in writing)]; and

(b) Personal Data of the types specified in Paragraph 2 of Schedule 1 (Data processing information)[ (or such other types as may be agreed by the parties in writing)].

10.4 The Provider shall only process the Customer Personal Data for the purposes specified in Paragraph 3 of Schedule 1 (Data processing information).

10.5 The Provider shall only process the Customer Personal Data during the Term[ and for not more than [30 days] following the end of the Term], subject to the other provisions of this Clause 10.

10.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to a third country under the Data Protection Laws)[, as set out in [these Terms and Conditions or any other document agreed by the parties in writing]].

10.7 The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:

(a) [the Provider may transfer [the Customer Personal Data] internally to [its own employees, offices and facilities] in *[jurisdiction(s)]*[, providing that such transfers must be protected by appropriate safeguards, namely *[specify safeguards]*]];

(b) [the Provider may transfer [the Customer Personal Data] to its third party processors in the jurisdictions identified in Paragraph 5 of Schedule 1 (Data processing information) and may permit its third party processors to make such transfers, providing that such transfers must be protected by any appropriate safeguards identified therein]; and

(c) [the Provider may transfer [the Customer Personal Data] to a country, a territory or sector to the extent that the competent data protection authorities have decided that the country, territory or sector ensures an adequate level of protection for Personal Data].

*[additional list items]*

10.8 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

10.9 Notwithstanding any other provision of the Contract, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by [applicable law]. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information[ on important grounds of public interest].

10.10 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

10.11 The Provider shall implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data[, including those measures specified in Paragraph 4 of Schedule 1 (Data processing information)].

10.12 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least [14 days] in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then [the Provider must not implement the changes] OR [the Customer may terminate the Contract on [7 days'] written notice to the Provider, providing that such notice must be given within the period of [7 days] following the date that the Provider informed the Customer of the intended changes] OR [*specify consequences of objection*]. The Provider shall ensure that each third party processor is subject to [the same] OR [equivalent] legal obligations as those imposed on the Provider by this Clause 10.

10.13 As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, [the third parties identified in] OR [third parties within the categories identified in] OR [the third parties, and third parties within the categories, identified in] Paragraph 5 of Schedule 1 (Data processing information).

10.14 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

10.15 The Provider shall assist the Customer in ensuring compliance with [the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws].[ The Provider may charge the Customer [at its standard time-based charging rates] for any work performed by the Provider at the request of the Customer pursuant to this Clause 10.15.]

10.16 The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay[ and, in any case, not later than [24] OR [36] OR [72] hours after the Provider becomes aware of the breach].

10.17 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 10[ and the Data Protection Laws].[ The Provider may charge the Customer [at its standard time-based charging rates] for any work performed by the Provider at the request of the Customer pursuant to this Clause 10.17[, providing that no such charges shall be levied with respect to [the completion by the Provider (at the reasonable request of the Customer, not more than once per calendar year)] of [the standard information security questionnaire of the Customer]].]

10.18 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that [applicable law] requires storage of the relevant Personal Data.

10.19 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer[ in respect of [the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 10]].[ The Provider may charge the Customer [at its standard time-based charging rates] for any work performed by the Provider at the request of the Customer pursuant to this Clause 10.19[, providing that no such charges shall be levied where the request to perform the work arises out of [any breach by the Provider of the Contract or any security breach affecting the systems of the Provider]].]

10.20 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Contract, then the parties shall use their best endeavours promptly to agree such variations to the Contract as may be necessary to remedy such non-compliance.

11. Warranties

11.1 The Provider warrants to the Customer that:

(a) [the Provider has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions];

(b) [the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under these Terms and Conditions]; and

(c) [the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions].

*[additional list items]*

11.2 The Customer warrants to the Provider that it has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions.

11.3 All of the parties' warranties and representations in respect of the subject matter of the Contract are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Contract will be implied into the Contract or any related contract.

12. Limitations and exclusions of liability

12.1 Nothing in these Terms and Conditions will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law.

12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in these Terms and Conditions:

(a) are subject to Clause 12.1; and

(b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

12.3 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of profits or anticipated savings.

12.4 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of revenue or income.

12.5 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of use or production.

12.6 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of business, contracts or opportunities.

12.7 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss or corruption of any data, database or software.

12.8 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any special, indirect or consequential loss or damage.

13. Termination

13.1 Either party may terminate the Contract by giving to the other party [at least 30 days'] written notice of termination.

13.2 Either party may terminate the Contract immediately by giving written notice of termination to the other party if the other party commits a material breach of these Terms and Conditions.

13.3 Subject to applicable law, either party may terminate the Contract immediately by giving written notice of termination to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[ (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract)]; or

(d) [if that other party is an individual:

(i) that other party becomes incapable of managing his or her own affairs as a result of illness or incapacity; or

(ii) that other party is the subject of a bankruptcy petition or order,

and if that other party dies then the Contract shall automatically terminate].

14. Effects of termination

14.1 Upon the termination of the Contract, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 5.2, 5.3, 6.4, 6.5, 6.6, 6.7, 9.2, 9.4, 10, 12, 14 and 16].

14.2 Except to the extent expressly provided otherwise in these Terms and Conditions, the termination of the Contract shall not affect the accrued rights of either party.

14.3 Within [30 days] following the termination of the Contract for any reason:

(a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Contract; and

(b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Contract,

without prejudice to the parties' other legal rights.

15. Subcontracting

15.1 The Provider must not subcontract any of its obligations under the Contract without the prior written consent of the Customer[, providing that the Customer must not unreasonably withhold or delay the giving of such consent].

OR

15.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Provider may subcontract any of its obligations under the Contract[, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question].

15.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

16. General

16.1 No breach of any provision of the Contract shall be waived except with the express written consent of the party not in breach.

16.2 If any provision of the Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

16.3 The Contract may not be varied except by a written document signed by or on behalf of each of the parties.

16.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under these Terms and Conditions.

16.5 The Contract is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Contract are not subject to the consent of any third party.

16.6 Subject to Clause 12.1, these Terms and Conditions shall constitute the entire agreement between the parties in relation to the subject matter of these Terms and Conditions, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

16.7 The Contract shall be governed by and construed in accordance with [English law].

16.8 The courts of [England] shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Contract.

SCHEDULE 1 (DATA PROCESSING INFORMATION)

1. Categories of data subject

*[Specify the categories of data subject whose personal data may be processed]*

2. Types of Personal Data

*[Specify types of personal data to be processed]*

3. Purposes of processing

*[Specify purposes for which personal data may be processed]*

4. Security measures for Personal Data

*[Specify the security measures used to protect personal data]*

5. Sub-processors of Personal Data

*[In relation to specific authorisations, identify sub-processors of personal data; in relation to general authorisations, identify categories of sub-processor; in each case, specify authorised international third country (extra-EEA/UK) transfers to sub-processors as well as any appropriate safeguards that must be used]*

STATEMENT OF WORK

1. Customer details

The Customer is [*[individual name]* of *[address]*] OR [*[company name]*, a company incorporated in *[jurisdiction]* (registration number *[number]*) having its registered office at *[address]*] OR [*[identify party]*]

2. Specification of Support Services

[Installation services, configuration services, integration services, the application of updates and upgrades, helpdesk provision, issue investigation and issue resolution] in relation to [the Supported Software and the Supported Hardware] OR [the Supported Software] OR [the Supported Hardware][, providing that the Support Services shall exclude [any training services]].

3. Identification of Supported Hardware and Supported Software

The Supported Software is *[supported software]*.

The Supported Hardware is *[supported hardware]*.

4. Identification of Third Party Software

*[Identify third party software]*

5. Specification of Products

*[Insert product details]*

6. Timetable

*[Insert timetable]*

7. Financial provisions

*[Insert financial provisions]*

By signing below the parties have indicated their acceptance of this Statement of Work together with the terms and conditions attached to this Statement of Work[, providing that if there are no terms and conditions attached to this Statement of Work, the parties agree that this Statement of Work shall be governed by [the terms and conditions most recently agreed by the parties in writing]].

**SIGNED BY** [*[individual name]* on [...............], the Provider] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Provider]:

........................................

**SIGNED BY** [*[individual name]* on [...............], the Customer] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Customer]:

........................................

Free IT support terms and conditions: drafting notes

Under these terms and conditions, a business may contract to provide IT support services to customers. Those support services may include both hardware support and software support. In addition to the core support provisions, clauses are included which cover the supply of third-party hardware and/or software to the customer, customer obligations in order to facilitate fulfilling the contract, and charges and payments.

The body of the document is followed by schedule 1, specifying details of data processing that may take place based on this contract, and skeleton statement of work, which outlines details regarding technical specification of support services. This document will help you to meet the requirements of data protection laws (UK and EU GDPRs).

This is a B2B document and should not be used in respect of customers that are consumers. This free document is almost identical to our basic IT support terms and conditions.

It includes, in addition to the provisions of the basic document, a textual credit or attribution clause which you should retain in your copies of the document. If you would like this document without the credit text, then you should purchase the basic document.

TERMS AND CONDITIONS

Clause 1: Definitions

Clause 1.1

Definition of Charges

* What charges are payable under this document?
* How should the time-based charging rates be described or specified?
* Will all the services be subject to time-based charging, or only some of the services?
* How are time-based charging units to be rounded?

Definition of Customer Personal Data

* Specify those categories of data with respect to which the Provider is a data controller.

Definition of Effective Date

* When will the contract come into force?

Definition of Provider

* Is the first party an individual, a company or something else?
* What is the full name of the individual (including middle names)?
* What is the postal address of the Provider?
* What is the full company name?
* In which jurisdiction is the Provider incorporated?
* What is the registration number of the Provider?
* What is the registered office address of the Provider?

Definition of Services

* Define "Services".

Definition of Term

* Define "Term", the period during which the contract will subsist.

Clause 2: Credit

Clause: Free documents licensing warning

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Clause 3: Term

Clause 3.2

* Is the term of the contract indefinite, or will it come to an end upon some agreed date, or upon the occurrence of a defined event?
* Upon what date will the contract terminate?
* Upon the occurrence of what event will the contract terminate?

Clause 4: Support Services

Clause 4.1

* During what period will the support services be provided?

Clause 4.2

* What standard(s) must the support services meet?
* Specify the standard or standards the support services must meet.

Clause 4.3

Optional element.

* How much notice must the Provider give to the Customer of a suspension of services following non-payment?

Clause 5: Product supply

Optional element.

Clause 6: Third Party Software supply

Optional element.

Clause 6.2

Optional element.

Clause 6.4

Optional element.

Clause 7: Customer obligations

Optional element.

Clause 7.1

* What must the Customer provide to the Provider?

Clause 7.2

Optional element.

Clause 8: Charges

Clause 8.2

Optional element.

Clause 8.3

Optional element.

* Are payment amounts stated inclusive or exclusive of VAT?

Clause 8.4

Optional element. Will the Provider be permitted to vary the charges, or any element of the charges, in any circumstances?

* Which elements of the charges may be varied?
* What notice period should apply to the variation of charges?
* Will variations only take effect upon a particular date?
* Should variations be subject to a cap?

Clause 9: Payments

Clause 9.1

* When should invoices be issued?
* Specify invoicing dates.

Clause 9.2

* What is the period for payment of invoices?
* When does the period for payment of an invoice begin to run?

Clause 9.3

Optional element.

* Using what methods should payments be made?

Clause 9.4

* What contractual interest rate should apply to late payments?
* *Late Payment of Commercial Debts (Interest) Act 1998 - https://www.legislation.gov.uk/ukpga/1998/20*

Clause 9.4

* What interest rate will apply here?
* Consider whether to include this acknowledgement.

Clause 10: Data protection

Will the Provider process personal data on behalf of the Customer?

This provision is designed to help the parties to a data processing arrangement to comply with UK and EU data protection laws, including the General Data Protection Regulation applicable in each jurisdiction. Quoted provisions below are taken from the original (EU) GDPR, but identical or very similar provisions are included in the UK GDPR.

In addition to a set of specific requirements, the GDPR includes a general obligation on data controllers to ensure compliance:

"Where processing is to be carried out on behalf of a controller, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject." (Article 28(1))

One aspect of ensuring compliance is the use of an appropriate written contract:

"Processing by a processor shall be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the controller and that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller." (Article 28(3))

The drafting in these provisions closely reflects the language of the GDPR.

* *Article 28, Regulation (EU) 2016/679 (General Data Protection Regulation) - https://gdpr-info.eu/art-28-gdpr/*

Clause 10.1

Optional element.

Clause 10.2

Optional element.

Clause 10.6

Article 28(2)(a) of the GDPR provides that the controller-processor contract must stipulate that the controller "processes the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organisation ... ".

Clause 10.7

Optional element.

Clause 10.8

Optional element.

The final section of Article 28(3) of the GDPR reads: "With regard to point (h) of the first subparagraph, the processor shall immediately inform the controller if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions."

The cross-reference in the legislation is presumably a mistake, and should point at Article 28(3)(a).

In any case, it is not clear from the legislation whether this provision needs to be part of the processing contract.

Clause 10.9

Article 28(2)(a) of the GDPR provides that the controller-processor contract must stipulate an exception to the general rule that personal data may only be processed on the data controller's instructions: " ... unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest".

Note the distinction between "Union or Member State law" in the GDPR and "applicable law" in the draft provision. There is a possibility of conflict between legal obligations here. Similarly, if applicable law prohibits the notification to the controller of legally-mandated processing, then in principle that might not be on "important grounds of public interest".

Clause 10.10

Article 28(3)(b) of the GDPR provides that the controller-processor contract must stipulate that the processor "ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality".

Clause 10.11

Article 28(3)(c) of the GDPR provides that the controller-processor contract must stipulate that the processor "takes all measures required pursuant to Article 32".

Article 32 provides that:

"1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate: (a) the pseudonymisation and encryption of personal data; (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

2. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

3. Adherence to an approved code of conduct as referred to in Article 40 or an approved certification mechanism as referred to in Article 42 may be used as an element by which to demonstrate compliance with the requirements set out in paragraph 1 of this Article.

4. The controller and processor shall take steps to ensure that any natural person acting under the authority of the controller or the processor who has access to personal data does not process them except on instructions from the controller, unless he or she is required to do so by Union or Member State law."

Clause 10.12

Article 28(2) of the GDPR provides that: "The processor shall not engage another processor without prior specific or general written authorisation of the controller. In the case of general written authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes".

Article 28(4) provides that: "Where a processor engages another processor for carrying out specific processing activities on behalf of the controller, the same data protection obligations as set out in the contract or other legal act between the controller and the processor as referred to in paragraph 3 shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this Regulation. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations."

Article 28(3)(d) provides that the controller-processor contract should stipulate that the processor "respects the conditions referred to in paragraphs 2 and 4 for engaging another processor".

Clause 10.13

Optional element.

Clause 10.14

Article 28(3)(e) of the GDPR provides that controller-processor contracts must stipulate that the processor "taking into account the nature of the processing, assists the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III".

Clause 10.15

Article 28(3)(f) of the GDPR provides that the controller-processor contract must stipulate that the processor "assists the controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 taking into account the nature of processing and the information available to the processor".

Clause 10.16

Optional element.

Article 33(2) of the GDPR provides that: "The processor shall notify the controller without undue delay after becoming aware of a personal data breach."

No specific time period for these notifications is specified in the GDPR.  The Article 29 Data Protection Working Party guidance on notifications states that the data processor's awareness of a breach fixes the data controller with awareness. If that is correct, the period for notification to the controller should of course be less than 72 hours, or the controller will not be in a position to comply with its own notification obligations.

Clause 10.17

Article 28(3)(h): the contract must require that the data processor  "makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article...".

The default text here is wider, also covering compliance with any supplemental contractual clauses and relevant data protection legislation.

Clause 10.18

Article 28(3)(g) of the GDPR requires that the controller-processor contract stipulates that the processor "at the choice of the controller, deletes or returns all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data".

NB this is slightly different from the suggested contract provision, which refers instead to "applicable law". Clearly, there could be a conflict here between the requirements of the law of a non-EU jurisdiction and the requirements of EU law.

Clause 10.19

Article 28(3)(h): the contract must require that the data processor "allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller".

The suggested qualification to the scope of audits is not expressly permitted in the legislation.

Clause 10.20

Optional element.

Consider whether additional rights of termination may be required in the event that the parties are unable to agree a suitable variation.

Clause 11: Warranties

Optional element.

Clause 11.1

Optional element.

* What general warranties will the Provider give to the Customer?

Clause 11.2

Optional element.

Clause 12: Limitations and exclusions of liability

Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts may rule that particular limitations and exclusions of liability in contracts are unenforceable.

The courts are particularly likely to intervene where a party is seeking to rely on a limitation or exclusion of liability in its standard terms and conditions, but will also sometimes intervene where a term has been individually negotiated. The courts may be more likely to rule that provisions excluding liability, as opposed to those merely limiting liability, are unenforceable. If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts, that provision should be drafted as an independent term, and be numbered separately from the other provisions. It may improve the chances of a limitation or exclusion of liability being found to be enforceable if the party seeking to rely upon it specifically drew it to the attention of the other party before the contract was entered into.

Exclusions and limitations of liability in UK contracts are primarily regulated by the Unfair Contract Terms Act 1977 ("UCTA"). Contracts regulated by UCTA cannot exclude or restrict a party's liability for death or personal injury resulting from negligence (Section 2(1), UCTA). Except insofar as the relevant term satisfies the requirements of reasonableness, such contracts cannot exclude or restrict liability: (i) for negligence (which includes a breach of an express or implied contractual obligation to take reasonable care or exercise reasonable skill) (Section 2(2), UCTA); or (ii) for misrepresentation (Section 3, Misrepresentation Act 1967).

In addition, if a contract is regulated by UCTA, and one of the parties is dealing on the other's written standard terms of business, then except insofar as the relevant contractual term satisfies the requirements of reasonableness the other party cannot: (i) exclude or restrict its liability in respect of a breach of contract; or (ii) claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of it; or (iii) claim to be entitled, in respect of the whole or any part of its contractual obligation, to render no contractual performance at all (see Section 3, UCTA).

UCTA includes various other restrictions, particularly in the case of contracts for the sale of goods and contracts under which possession or ownership of goods passes.

Somewhat different rules apply to limitations of liability in contracts with consumers, and these provisions should not be used in relation to such contracts.

These guidance notes provide a very incomplete and basic overview of a complex subject. Accordingly, you should take legal advice if you may wish to rely upon a limitation or exclusion of liability.

* *Unfair Contract Terms Act 1977 - https://www.legislation.gov.uk/ukpga/1977/50*

Clause 12.1

Do not delete this provision (except upon legal advice). Without this provision, the specific limitations and exclusions of liability in the document are more likely to be unenforceable.

Clause 12.3

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.4

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.5

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.6

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.7

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.8

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 13: Termination

Clause 13.1

* What notice period will apply to termination without cause by either party?

Clause 13.3

Depending upon the status of the parties, the circumstances of the termination and the applicable law, some of the rights to terminate set out here may be unenforceable.

* Will the winding up of a party as part of a solvent company reorganisation give rise to a right of termination for the other party?

Clause 14: Effects of termination

Clause 14.3

Optional element.

This provision will not be suitable in all circumstances. The appropriate treatment of charges upon termination will vary from contract to contract. Note, also, that this provision only deals with charges in respect of services.

* Within what period following termination must charges in respect of services be settled?

Clause 15: Subcontracting

Optional element.

Clause 15.1

* Will the Customer only be permitted to withhold consent to subcontracting where it is reasonable to do so?

Clause 15.1

* Will the Provider be obliged to notify the Customer of any subcontracting arrangements?

Clause 16: General

Clause 16.1

Optional element.

Clause 16.2

Optional element.

Clause 16.3

Optional element.

This is intended to prevent, for example, one party wrongfully claiming that a term of the contract was changed in a telephone call.

Clause 16.4

Optional element.

Clause 16.5

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

* *Contracts (Rights of Third Parties) Act 1999 - https://www.legislation.gov.uk/ukpga/1999/31*

Clause 16.6

Optional element.

Clause 16.7

This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

* Which law will govern the document?

Clause 16.8

Optional element.

As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

* The courts of which jurisdiction will have the exclusive right to adjudicate disputes relating to the document (subject to applicable law)?

SCHEDULE 1 (DATA PROCESSING INFORMATION)

Optional element.

Paragraph 1: Categories of data subject

For example, "The employees and individual subcontractors of the Customer" or "The individual customers and customer personnel of the Customer".

Paragraph 2: Types of Personal Data

For example, "Names, postal addresses, email addresses and telephone numbers".

Paragraph 4: Security measures for Personal Data

Optional element.

Paragraph 5: Sub-processors of Personal Data

Optional element.

STATEMENT OF WORK

Section 1: Customer details

* Is the Customer an individual, a company, or something else?
* What is the full name of the individual (including middle names)?
* What is the postal address of the Customer?
* What is the full company name?
* In which jurisdiction is the Customer incorporated?
* What is the registration number of the Customer?
* What is the registered office address of the Customer?

Section 3: Identification of Supported Hardware and Supported Software

Optional element.

Subsection: Identification of supported software

Optional element.

* Identify the supported software.

Subsection: Identification of supported hardware

Optional element.

* Identify the supported hardware.

Section 4: Identification of Third Party Software

Optional element.

Section 5: Specification of Products

Optional element.

Section 6: Timetable

Optional element.

* Insert the timetable for the performance of the parties' obligations.

Section 7: Financial provisions

* Insert financial provisions.

Section: Execution of statement of work (individuals or companies)

Subsection: Execution of contract by First Party (individual or company)

* Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?
* What is the full name of the Provider signatory?
* On what date is the Provider signing the contract?
* Add the full name of the person who will sign the document on behalf of the Provider.
* On what date is the contract being signed on behalf of the Provider?

Subsection: Execution of contract by Second Party (individual or company)

* Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?
* What is the full name of the Customer signatory?
* On what date is the Customer signing the contract?
* Add the full name of the person who will sign the document on behalf of the Customer.
* On what date is the contract being signed on behalf of the Customer?